Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Supreme Court of the United States

OCTOBER TERM, 1960

No.

FERMIN FONSECA FLORES,
PETITIONER,
v.
ROBERT R. PRANN,
RESPONDENT;

JAIME FARDONK VAZQUEZ,
PETITIONER,
v.
THE PORTO RICO LIGHTERAGE CO.,
RESPONDENT;

ROBERTO GALINDO RAMOS,
PETITIONER,
v.
SAN JUAN DREDGING CORPORATION,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States

Come the petitioners by their counsel, Max Goldman, and respectfully petition this Honorable Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit which affirmed the dismissal of the complaints filed by each of the petitioners in the United States District Court for the District of Puerto Rico, and in support of their petition do show:

1. The opinion of the United States Court of Appeals for the First Circuit is reported at 282 F.2d 153 *sub. nom. Flores et al.* v. *Prann* (see Appendix hereto, page 12); and the order denying rehearing was issued on November 15, 1960, but has not yet been published. The opinion of the United States District Court for the District of Puerto Rico is reported at 178 F. Supp. 845, *Flores* v. *Prann*.

2. The judgment of the Court below affirming the District Court's dismissal of the complaints is dated September 15, 1960. An extension of time was granted by the Court of Appeals to petition for rehearing enlarging the time to October 28, 1960. The petition for rehearing was filed within the time granted by the Court and denied on November 3, 1960. An extension of time to petition for certiorari was granted by this Honorable Court to February 10, 1961.

JURISDICTION

The jurisdiction of this Honorable Court to review by way of writ of certiorari is founded on the United States Code, Title 28, Sections 1254 (1) and 2101 (c) and Supreme Court Rules, Rule 19, Subsection 1 (b).

3. The questions presented for review arose as follows:

Three American seamen were injured aboard American flag vessels within the territorial waters of the Commonwealth of Puerto Rico, in the course of their employment with employers insured under the Workmen's Accident Compensation Act of Puerto Rico, which provides that compensation shall be the exclusive remedy of the employee as against his employer. Suits were instituted on behalf of each of these seamen against their respective employers in the United States District Court for the District of Puerto Rico based on the Jones Act, 46 U.S.C. 688, and these suits were dismissed, the dismissal having been affirmed by the judgment appealed.

The questions thus presented are:

a. Does the Jones Act, 46 U.S.C. 688, apply to seamen injured within the territorial waters of the Commonwealth of Puerto Rico?

This question comprises the subsidiary questions as to whether the power to legislate concerning the general admiralty and maritime law is exclusively reserved to the Federal government; whether the general admiralty and maritime law must be uniformly applied; and whether by the enactment of the Jones Act, *supra*, Congress has preempted the field.

b. Has the legislature of the Commonwealth of Puerto Rico been empowered to make the Jones Act, *supra*, inoperable in the territorial waters of the Commonwealth of Puerto Rico?

This question comprises the subsidiary questions as to the scope of the powers granted to Puerto Rico by the Organic Act of 1917, 39 Stat. 954 (1917), which was carried over intact by the Puerto Rico Federal Relations Act of 1950, 64 Stat. 319, particularly that section which is found in Title 48, United States Code, Section 749.

c. Does the Workmen's Accident Compensation Act, 11 L.P.R.A. c. 1, et. seq., as interpreted by the judgment on review effect a denial of the equal protection of the laws to Puerto Rican seamen, citizens of the United States?

4. The constitutional provisions involved are:

United States Constitution, Article 3, Section 2:

> "The judicial Power shall extend to all Cases, in Law and equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversia to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State; between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

United States Constitution, Amendment XIV, Section 1.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws."

The statutes involved are:

46 U.S.C., 1952 ed. § 688:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

48 U.S.C., 1952 ed., § 749:

"The harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters, owned by the United States on March 2, 1917, and not reserved by the United States for public purposes, are placed under the control of the government of Puerto Rico, to be administered in the same manner and subject to the same limitations as the

property enumerated in sections 747 and 748 of this title. All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters. Nothing in this chapter contained shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said island and its adjacent islands by the Secretary of the Army or other authorized officer or agent of the United States prior to March 2, 1917."

Laws of Puerto Rico Annotated, Title 11, Section 21:

"When an employer insures his workmen or employees in accordance with this chapter, the right herein established to obtain compensation shall be the only remedy against the employer; but in case of accident to, or disease or death of, the workmen or employees not entitled to compensation under this chapter, the liability of the employer is, and shall continue to be, the same as if this chapter did not exist."

5. The facts material to the consideration of the questions presented have been stated above. Jurisdiction in the United States District Court for the District of Puerto Rico, the court of first instance, was based upon 46 U.S.C., § 688.

Argument

1. This Case Raises Important Questions of Federal Law Which Have Not Been, but Should Be, Settled by This Court.

An important federal question is posed in that the Court of Appeals for the First Circuit has interpreted the Puerto Rican Federal Relations Act as bestowing upon the Commonwealth of Puerto Rico a degree of sovereignty greater than that enjoyed by the fifty federated states. The decision in effect grants to the Commonwealth of Puerto Rico power to adopt legislation concerning the navigable waters of the United States contrary to the general admiralty and maritime law.

Neither the Constitution of the United States nor the Puerto Rican Federal Relations Act defines the boundaries of sovereignty enjoyed by the Commonwealth of Puerto Rico. This Honorable Court has rendered no decision which clarifies the question.

Such a decision is necessary to clarify the law so that a host of associated questions will not require extended litigation for answer. If federal control over the navigable waters of Puerto Rico may be limited by contradictory legislation adopted by the Commonwealth of Puerto Rico, may not the Commonwealth of Puerto Rico:

(a) Apply the Puerto Rican Labor Law to wage disputes between shipowners and their crews in preference to the law as stated in Title 46 of the United States Code?

(b) Apply its standards of inspection and licensing to vessels and crews in preference to standards established by the federal government?

(c) Define and prosecute crimes which occur aboard vessels in Puerto Rican waters, disregarding the law as stated in Title 46 of the United States Code?

(d) Deny the right of Puerto Rican seamen to obtain treatment in a Marine Hospital?

(e) Establish its own shipping commissioner?

(f) Impose tonnage duties on American vessels?

(g) Adopt its own Rules of the Road for Puerto Rican waters?

(h) Nationalize vessels registered in Puerto Rico?

The Court of Appeals has stated:

"... Congress in the valid exercise of powers conferred upon it by the Constitution gave the Legislature of Puerto Rico power to enact legislation inconsistent with the Jones Act and the general maritime law...." 282 F.2d at page 157.

Petitioners respectfully contend that no such broad grant of power was conferred, and only a decision by this Court will settle the issue of the scope of power conferred.

2. THE COURT OF APPEALS FOR THE FIRST CIRCUIT HAS DECIDED A FEDERAL QUESTION IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

In *Panama R. Co. v. Johnson*, 264 U.S. 375, 44 S.Ct. 391, 68 L. Ed. 748, this Honorable Court held that the relative rights and obligations of seamen and their employers fall-

within the recognized sphere of maritime law and that Congress is invested with the power to legislate over these substantive provisions of the maritime law. This Court likewise held that the Jones Act, 46 U.S.C. § 688, was an integral part of that maritime law and stated:

> "The Statute (46 U.S.C.A. 688) extends territorially as far as Congress can make it go, and there is nothing in it to cause its operation to be otherwise than uniform. The national legislation respecting injuries to railway employees engaged in interstate and foreign commerce which it adopts has a uniform operation, and neither is nor can be deflected therefrom by local statute, or local views of common-law rules. (Citations omitted). Of course, that legislation will have a like operation as part of this statute." (264 U.S. at page 396).

In its decision below the Court of Appeals violated the principle of uniformity adopted by this Court by recognizing that the decision created an area of lack of uniformity.

Other decisions of this Court imposing the requirement of uniformity in the general admiralty and maritime law are cited by the court below, but held inapplicable to Puerto Rico.

Southern Pacific Co. v. *Jensen*, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086.

Knickerbocker Ice Co. v. *Stewart*, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834.

State of Washington v. *W. C. Dawson & Co.*, 264 U.S. 219, 44 S. Ct. 302, 68 L. Ed. 646.

The Court of Appeals explicitly recognizes that no state could exercise the power over navigable waters that it holds Puerto Rico enjoys.

3. The Court of Appeals Has Rendered a Decision in Conflict With Prior Decisions of the Same Court.

In *Guerrido* v. *Alcoa Steamship Co., Inc.*, 254 F.2d 349, the Court of Appeals for the First Circuit, after a thorough analysis of the applicable legislation, opinions and historical documents concluded that the navigable waters of Puerto Rico were to be regarded as navigable waters of the United States, subject to federal jurisdiction. In that case, the court also held that the maritime law of the United States was equally applicable to determine the rights and liabilities of private persons.

The instant case was distinguished from the prior holding in *Guerrido* on the theory that the Jones Act was rendered inapplicable to Puerto Rico by inconsistent Puerto Rican Legislation. Logically, the only way that the position of the Court of Appeals can be upheld is to conclude that when a seaman is injured on navigable waters, a court may apply the doctrine of local concern.

However, the very same court has held:

> "If plaintiff was a seaman injured on navigable waters, there is no place for the application of the doctrine of local concern." *Gahagan Const. Corporation* v. *Armao*, 165 F.2d 301, 305.

The decision in *Gahagan* is abundantly supported by decisions of other courts including several rendered by this Honorable Court.

See, e.g.

Employers' Liability Assurance Corporation v. *Cook*, 281 U.S. 233, 237, 50 S. Ct. 308, 74 L. Ed. 823;

Northern Coal & Dock Co. v. *Strand*, 278 U.S. 142, 147, 49 S. Ct. 88, 73 L. Ed. 232;

Kibadeaux v. *Standard Dredging Co.*, 81 F.2d 670, certiorari denied, 229 U.S. 549, 57 S. Ct. 12, 81 L. Ed. 404;

W. J. McCahan Sugar Refining & Molasses Co. v. *Stoffel*, 41 F.2d 651.

Moreover, the decision below is irreconcilable with *Gahagan*. Navigable waters of the United States are no less a subject of national concern in Puerto Rico than anywhere else. If the decision at bar is irreconcilable with *Gahagan* it is equally irreconcilable with *Guerrido*.

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be granted, and that this Court should review and reverse the decision of the Court of Appeals.

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Appendix

United States Court of Appeals
For the First Circuit

No. 5605.

FERMIN FONSECA FLORES,

PLAINTIFF, APPELLANT,

v.

ROBERT R. PRANN,

DEFENDANT, APPELLEE;

No. 5606.

JAIME FARDONK VAZQUEZ,

PLAINTIFF, APPELLANT,

v.

THE PORTO RICO LIGHTERAGE CO.,

DEFENDANT, APPELLEE;

No. 5612.

ROBERTO GALINDO RAMOS,

PLAINTIFF, APPELLANT,

v.

SAN JUAN DREDGING CORPORATION,

DEFENDANT, APPELLEE.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO.

Before WOODBURY, *Chief Judge*, and HARTIGAN and ALDRICH, *Circuit Judges*.

Harvey B. Nachman, with whom *Stanley L. Feldstein* and *Golenbock & Nachman* were on brief, for appellants.

Walter L. Newsom, Jr., with whom *Enrique Cordova Diaz* and *Brown, Newsom & Cordova* were on brief, for Robert R. Prann, appellee.

Antonio M. Bird, with whom *Hartzell, Fernandez & Novas* was on brief, for The Porto Rico Lighterage Co., appellee.

Sarah Torres Peralta, with whom *Luis E. Garcia Benitez* was on brief, for San Juan Dredging Corporation, appellee.

OPINION OF THE COURT.

September 15, 1960.

WOODBURY, *Chief Judge*. These appeals present a common question. They were heard together and can be decided by one opinion.

The appellants were seamen and members of the crews of vessels[1] who were injured while at work on their respective vessels when afloat on navigable waters within the territorial limits of Puerto Rico. Their employers had insured their employees in accordance with, and hence were covered by, the Puerto Rico Workmen's Accident Compensation Act, Act No. 45, Laws of 1935, as amended, 11 L.P.R.A. 1 *et seq.*, and each appellant applied for and was awarded compensation under that Act. Following this each appellant brought suit in the court below against his employer to recover under the Jones Act for negligence and under the general maritime law for unseaworthiness. These appeals are from summary judgments dismissing each complaint on the ground that the plaintiffs' only remedy was that afforded by the local workmen's compensation act.[2]

In *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), the Court ruled that the Constitution of the United States conferred exclusive power upon the federal government

[1] At least, like the court below, we consider them to have been seamen and members of the crews of vessels although two of them worked on stationary dredges one of which was engaged in a highway construction project. See *Senko* v. *La Crosse Dredging Corp.*, 352 U.S. 370 (1957), *Grimes* v. *Raymond Concrete Pile Co.*, 356 U.S. 252 (1958).

[2] Section 21 of that act in material part provides:

"When an employer insures his workmen or employees in accordance with this chapter, the right herein established to obtain compensation shall be the only remedy against the employer; . . . ."

with respect to matters within the admiralty and maritime jurisdiction. Saying at page 215 that it must now be accepted as settled doctrine that ". . . Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country," the Court held that no State might validly apply its workmen's compensation law to maritime injuries occurring on its territorial waters. Congress then amended the "saving to suitors" clause to provide not only that suitors in all cases should have the right to a common-law remedy when the common law was competent to give it, but also to give ". . . to claimants the rights and remedies under the workmen's compensation law of any State." But the amendment was struck down as unconstitutional in *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 164 (1920), on the ground that the constitutional power of Congress to legislate concerning rights and liabilities within the maritime jurisdiction, and remedies for their enforcement, could not be delegated to the States, for the reason that "Congress cannot transfer its legislative power to the States—by nature this is non-delegable." Later Congress made a similar but more limited attempt but it met the same fate in *Washington* v. *W.C. Dawson & Co.*, 264 U.S. 219 (1924).

These decisions impose constitutional restrictions on the power of the States and on the power of Congress to delegate its legislative powers to the States. But, whatever the actual status of the Commonwealth of Puerto Rico may be in all its details, its present status is certainly not that of a State of the United States. Nor is it even that of a territory incorporated into the union preparatory to statehood. *Guerrido* v. *Alcoa Steamship Co., Inc.*, 234 F.2d 349, 352 (C.A. 1, 1956). As such the Government of Puerto Rico has such powers as Congress from time to time has seen fit to give it. And the broad power of Congress under Article IV § 3, ¶ 2 to legislate for national territory is

limited under the doctrine of the Insular Cases, so-called,[3] only by fundamental constitutional principles.

This court in *Lastra* v. *New York & Porto Rico S. S. Co.*, 2 F.2d 812, 813 (C.A. 1, 1924), and in *Guerrido* v. *Alcoa S. S. Co.*, supra, was not aware of any basic principle of the Constitution which prevented Congress from giving Puerto Rico jurisdiction over its own waters. Nor are we. Our problem, therefore, is not one of constitutional limitations. It is one of statutory interpretation. It is whether Congress in the exercise of its constitutional power under Article IV § 3, ¶ 2 to legislate for national territory has in fact seen fit to confer on the Government of Puerto Rico power to make its workmen's compensation law applicable to injuries sustained by employees while at work on its territorial waters.

This court in the *Lastra* case cited above definitely answered this questioned in the affirmative. The basis for the court's decision was that in 1917 by §§ 7, 8 and 37 of the Second Puerto Rico Organic Act, called the Jones Act, 39 Stat. 951, 954, 964, Congress conferred full power of control over local navigable waters upon the Government of Puerto Rico to the complete exclusion of the admiralty and maritime law of the United States. Later on in the *Guerrido* case we reaffirmed the result reached in *Lastra* but not on the broad basis on which this court rested its result, in that case, saying at page 352 that we had ". . . reached the conclusion that the broad proposition that the admiralty and maritime law of the United States is not in force to any extent in the navigable waters of Puerto Rico which we laid down in the *Lastra* case cannot be sustained." We rested this conclusion on a careful and

[3] *De Lima* v. *Bidwell*, 182 U.S. 1 (1901), and *Downes* v. *Bidwell*, 182 U.S. 244 (1901), and subsequent cases confirming and applying their doctrine, see cases cited in *People of Puerto Rico* v. *Tapia*, 245 U.S. 639 (1918).

thorough analysis of the applicable legislation, opinions and historical documents which need not be repeated here. It will suffice to say that as a result of our analysis we came to the conclusion ". . . that almost from the day of the Spanish cession of Puerto Rico to the United States it was recognized that the navigable waters of the island were to be regarded as navigable waters of the United States subject to the federal jurisdiction." We recognized that the statutes and opinions to which we referred to support this conclusion dealt primarily with the exercise of admiralty and maritime powers by the federal government in Puerto Rican waters. But at page 354 we said: ". . . we find nothing in them to suggest that the rules of the maritime law of the United States were not equally applicable in those waters to determine the rights and liabilities of private persons."

Nevertheless, in *Guerrido* we adhered to the conclusion reached in *Lastra* on the ground that §§ 7, 8 and 37 of the Second Organic Act of 1917, which were continued in force and form a part of the Puerto Rican Federal Relations Act,[4] gave the Legislature of Puerto Rico general legislative power over local waters. Therefore in the *Guerrido* case we came to the conclusion ". . . that the rules of the admiralty and maritime law of the United States are presently in force in the navigable waters of the United States in and around the island of Puerto Rico to the extent that they are not locally inapplicable either because they were not designed to apply to Puerto Rican waters or because they have been rendered inapplicable to these waters by inconsistent Puerto Rican legislation." But we were very careful immediately to point out at page 355 that this was of course not to say ". . . that Puerto Rican legislation could thus supplant a rule of maritime law

[4] Law 600, 64 Stat. 319; 48 U.S.C. § 731, *et seq.*

which Congress in the exercise of its constitutional power has expressly made applicable to Puerto Rican waters."

It is certainly true that neither the Jones Act nor the general maritime law of unseaworthiness are inherently inapplicable in Puerto Rico. But on the other hand, there is nothing in the Jones Act specifically making its provisions applicable in the territorial waters of Puerto Rico and we are not aware that Congress has ever taken action to make the general maritime law of unseaworthiness apply in those waters. Instead in *Lastra* and *Guerrido* this court held and we agree that Congress in the valid exercise of powers conferred upon it by the Constitution gave the Legislature of Puerto Rico power to enact legislation inconsistent with the Jones Act and the general maritime law, and that the Legislature of Puerto Rico had exercised its power in its Workmen's Accident Compensation Act. Of course if Congress sees fit it may supplant the local legislation as it applies to local navigable waters by making the Jones Act and the general maritime law of unseaworthiness specifically applicable in Puerto Rican waters, but it is not our function to do so.

We recognize that this holding creates an area of lack of uniformity in the maritime law. But it is clearly recognized in the *Jensen* case, *supra*, that absolute uniformity in things maritime is not a constitutional requirement nor is it even essential to the proper harmony of the maritime law in its interstate and international relations. For instances of lack of uniformity in the law of admiralty as applied in this country see the dissenting opinion of Mr. Justice Holmes in the *Jensen* case and the dissenting opinion of Mr. Justice Brandeis in the *Knickerbocker Ice Co.* case. If uniformity is desirable, it can be readily achieved by Congress. Until it specifically does so, we infer as this court did in the *Lastra* and *Guerrido* cases that in the sections of the Second Organic Act referred

to above Congress intended to clothe the Government of Puerto Rico with power to provide for the application of its workmen's compensation act to injuries suffered by employees on local navigable waters. And this inference is supported by the practically contemporaneous amendments of the "saving to suitors" clause held unconstitutional in the *Knickerbocker Ice Co.* and *Washington* cases, *supra*, for those amendments indicate that it was then the mood of Congress to permit application of local law to injuries suffered by employees on local navigable waters. If the mood of Congress has changed, means for expressing the change are readily at hand.

Judgments will be entered affirming the judgments of the District Court.